

PRIVATE CHAPTER NO. 12

HOUSE BILL NO. 1016

By Representatives McCord, Montgomery

Substituted for: Senate Bill No. 1626

By Senator Raymond Finney

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist camp, tourist courts, cabin rental, campground, motel or any place in which rooms, lodgings or accommodations are furnished for transients for a consideration in Sevier County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. For the purposes of this act:

(1) "Clerk" means the county clerk of Sevier County, Tennessee or such other officer as the county legislative body may direct.

(2) "Consideration" means the consideration charged, whether or not received, for the occupancy in a lodging valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(3) "County" means Sevier County, Tennessee.

(4) "Lodging" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling or sleeping purposes, and located outside the boundaries of any incorporated municipality which has prior to the effective date of this act imposed a similar tax on a transient exercising or entitled to occupancy for any rooms, spaces, or accommodations in a lodging; such term includes any lodging facility, including but not limited to, inn, tourist camp, tourist court, cabin rental, campground or any place in which rooms, spaces or accommodations are furnished to transients for a consideration.

(5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, space or accommodations in any lodging.

(6) "Operator" means the person operating the lodging whether as owner, lessee or otherwise, and shall include governmental entities.

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.

(8) "Tourist related activities" means infrastructure needs, advertising, marketing, chamber of commerce expenditures, and convention visitor bureau expenses all related to tourism; and

(9) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, spaces or accommodations in a lodging for a period of less than thirty (30) continuous days, including time-share use when the time-share is used for overnight occupancy. The term "transient" does not include any person who occupies a timeshare project, as defined in title 66, chapter 32, pursuant to an exchange of one timeshare interval for another timeshare interval through an exchange program.

SECTION 2. The legislative body of Sevier County is authorized to levy a privilege tax upon the privilege of occupancy in any lodging of each transient, in an amount not to exceed three percent (3%) of the rate charged by the operator. The tax imposed is a privilege tax upon the transient occupying such room or other accommodation and is to be collected and distributed as herein provided. The rate of the tax may be modified by the county legislative body subject to the three percent limitation. Such tax shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 3. Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy of the lodging. Such invoice shall be given directly or transmitted to the transient, a copy thereof to be retained and filed by the operator as provided in Section 8.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected or charged, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 4. No operator of a lodging shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 5.

(a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in lodgings within the county, to the clerk not later than the twentieth day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during or after occupancy, as may be the custom of the operator. If credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the county clerk for collecting the tax, the clerk shall be allowed five percent (5%) of the amount of the tax remitted by the operators.

(c) The clerk shall faithfully account for, make proper reports of, and pay over to the trustee of the county at monthly intervals, all funds paid to, and received by, such clerk for the privilege tax authorized by this act.

SECTION 6. The county clerk shall be responsible for the collection of the tax and shall place the proceeds of such tax in accounts as designated in Section 10 for the purposes stated therein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 7.

(a) Taxes collected by an operator which are not remitted to the clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted.

(b) Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00) upon a finding of such knowing refusal by a court of competent jurisdiction. As used in this section, "each occurrence" means each day.

(c) Nothing in this section shall be construed to prevent the county clerk or other authorized collector of the tax from pursuing any civil remedy available to the collector by law, including issuing distress warrants and the seizure of assets, to collect any taxes due or delinquent under this act.

SECTION 8. It shall be the duty of every operator liable for the collection and payment to the county of any tax levied pursuant to this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax, which records the clerk shall have the right to inspect at all reasonable times.

SECTION 9. The clerk in administering and enforcing the provisions of the act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67, Tennessee Code Annotated, or otherwise provided by law for the county clerks.

Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Tennessee Code Annotated, Title 67, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied pursuant to this act. The provisions of Tennessee Code Annotated, Section 67-1-707, shall be applicable to adjustments and refunds of such tax. With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the clerk under the authority of this act shall be refunded by the clerk.

Notice of any tax paid under protest shall be given to the clerk and the resolution authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 10. The proceeds of the tax authorized by this act shall be deposited in the fund of the county as specified by resolution of the county legislative body to be used for the following purposes:

(1) Fifty percent (50%) of the proceeds of the tax shall be dedicated for tourist related activities; and

(2) Fifty percent (50%) of the proceeds of the tax shall be dedicated for educational purposes.

SECTION 11. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Sevier County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body of Sevier County to the secretary of state.

SECTION 14. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on the first day of the month following approval as provided in Section 13, the public welfare requiring it.

PASSED: March 14, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 28th day of March 2007



PHIL BREDESEN, GOVERNOR